

K&L GATES

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Joanna A Diakos
joanna.diakoskordalis@klgates.com

BY ECF

T +1 212 536 4807
F +1 212 536 3901

The Honorable Judge Paul A. Engelmayer
United States District Judge
Southern District of New York
Thurgood Marshall
United States Courthouse, Courtroom: 1305
40 Foley Square
New York, NY 10007

Re: **Tempur-Pedic North America, LLC et al v. SOS Furniture Company, Inc. et al.**
(Case No. 1:20-mc-00235-PAE)

Dear Judge Engelmayer:

We are counsel to Judgment Creditors Tempur-Pedic North America, LLC (“Tempur-Pedic”), Sealy Mattress Manufacturing Company, LLC (“Sealy”), and Comfort Revolution, LLC (“Comfort Revolution,” and together with Tempur-Pedic and Sealy “Tempur Sealy” or “Judgment Creditors,” and each individually as “Judgment Creditor”) in the referenced matter. We file this letter-motion to respectfully request that the Court issue an order allowing the Judgment Creditors to utilize a private process service in order to serve a certified Writ of execution and Subpoena *Duces Tecum* upon American Express Travel Related Services, Inc., by way of its Registered Agent, C T Corporation System, located at 28 Liberty St., New York, New York 10005.

Specifically, Judgment Creditors’ attorneys propose to utilize the services of DGR Legal, a process and support service entity which Judgment Creditors’ attorneys have regularly utilized.

As background and context for this request, Judgment Creditors’ counsel offer the following:

1. On June 19, 2020, Judgment Creditors filed a certified copy of the May 4, 2020, judgment issued by the United States District Court for the Eastern District of Kentucky, Lexington Division, in the matter captioned *Tempur-Pedic North America, LLC et al v. SOS Furniture Company, Inc. et al.* (Case No. 5:20-CV-00054-REW), (the “Judgment”), seeking to enforce the same in this Court against the defaulting Defendants SOS Furniture Company, Inc. (“SOS”) and Mattress One, Inc. (“Mattress One”) (together, “Defendants”).

2. As part of Judgment Creditors' investigations in aid of executing the Judgment, Judgment Creditors understand, upon information and belief, that the Defendants have significant money assets being held by American Express Travel Related Services, Inc.

3. To be clear, Judgment Creditors do not know for certain whether, in fact, American Express Travel Related Services, Inc. does in fact currently hold such assets of Defendants—this is mostly due to the fact that Defendants have failed to answer all of Judgment Creditor's discovery requests made in aid of execution of the Judgment. As of the date of this filing a Motion to Compel Answers to Judgment Creditors' Discovery in Aid of Execution is pending in the underlying litigation in the Kentucky District Court.

4. On July 8, 2020, Judgment Creditors' counsel reached out to the United States Marshal's Office for the Southern District of New York to arrange service of the Writ on American Express Travel Related Services, Inc. The Marshal's office advised that the office is currently at a standstill due to the ongoing global pandemic, and are prevented from executing personal service.

5. We understand, to date, that the Marshal's office is not serving writs. On August 5, 2020, we received an email from the United States Marshall Service stating "at this time personal service still suspended". The ongoing standstill by the Marshal's Office, and the subsequent backlog and delays in efforts to effectuate personal service once these resume have made it necessary for Judgment Creditors to file this motion.

For the foregoing reasons, Judgment Creditors respectfully request that the Court issue an Order 1) allowing them to retain DGR Legal, a private process service, to serve the certified Writ of Execution and Subpoena Duces Tecum, and 2) any such other relief as the Court may deem just and proper.

Respectfully yours,

/s/ Joanna A. Diakos

The Court grants the Judgment Creditors' motion to retain DGR Legal to serve the certified Writ of Execution and Subpoena Duces Tecum.

Joanna A Diakos

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

August 12, 2020